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HIGH COURT OF CHHATTISGARH: BILASPUR
S.B. HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J
CIVIL REVISION NO. 335/2003

PETITIONER: Shri Nagendra Kumar Agrawal, aged about 60 years, s/o. Shri Jai Krishna Agrawal, Saraswati Printing Press, Sadar Bazar, Raipur, Dist. Raipur (CG).

Vs.

RESPONDENT Smt. Hakeem Bai, Wd/o. Late Shri Tehir Ali, r/o. Sadar Bazar, Raipur, Dist. Raipur (CG).

PRESENT:

Shri H.S. Patel and Shri Vivek Ranjan Tiwari, Counsel for the petitioner.

Ku. Madhu Modi, Counsel for the respondent.

O R D E R

(Passed on 03/01/2006)

This revision under Section 23-E of the Chhattisgarh Accommodation Control Act, 1961 (for short, "the Act") is directed against the order dated 17/10/2003 passed by the Rent Controlling Authority (for short, "Authority") Raipur, in Case No. 6/90(8) 2002-2003 whereby order for the recovery of possession in favour of landlord/respondent has been passed.

2) Respondent/landlord Smt. Hakeem Bai filed an application under Section 23-A of the Act for the recovery of possession of the suit accommodation on the ground that the suit accommodation is required bona fide by her for business of her son namely Falaz Abbas Saifi.

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3) Petitioner/tenant on service of summons, within prescribed period filed an application supported by an affidavit stating the grounds on which he sought to contest the application for eviction to obtain leave from the Rent Controlling Authority in accordance with Section 23-C of the Act. The application was opposed by the landlord/respondent. Petitioner/tenant in his application stated that Falaz Abbas Saifi who is an Advocate is doing his business for the last 26-27 years in a part of house bearing No.44/288. The said house is situated at main road and behind it a house with all facilities having 4500 sq.ft Carpet are in his possession. Smt. Hakeem Bai is only a co-owner having 12.5% share in the said accommodation who is mentally and physically ill and is not competent to file an application. Only to enhance the rent from Rs.1600/- (Rupees One thousand six hundred) to Rs.5,000/- (Rupees Five thousand) on false pretext this application for the recovery of the suit accommodation has been filed. Respondent/landlord although opposed the application, but did not deny, in a specific term, her share as stated by tenant/petitioner to be incorrect.

4) Learned Authority after hearing both the parties vide separate order dated 17/10/2003 dismissed the application filed by the tenant for obtaining leave to defend on the ground that the tenant failed to show any ground on which leave to defend may be allowed. Learned Authority also struck out his defence and vide impugned order allowed the application filed by the landlord/respondent for the recovery of the suit accommodation from tenant/petitioner.

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5) Section 23-C (2) of the Act reads as below:

"23-C(2) The Rent Controlling Authority shall, within one month from the date of receipt of application give to the tenant, if necessary, leave to contest the application if the application supported by an affidavit filed by the tenant discloses such facts would disentitle the landlord from obtaining an order for the recovery of possession of the accommodation on the ground specified in Section 23-A."

6) From bare reading of the above said provision it is clear that if tenant discloses such facts that would disentitle the landlord from obtaining an order for the recovery of possession of the accommodation on the ground specified in Section 23-A he is entitled to obtain leave to contest the application.

7) Under Section 23-A of the Act, application for the recovery of possession for non-residential accommodation on bona fide requirement filed by the owner is tenable. Landlord's son who is an Advocate, is doing his business in an accommodation for the last 26 – 27 years. Whether that accommodation is sufficient or not and whether accommodation in possession of tenant will fulfill the need to carry out his business are the matters required to be proved by evidence and if it is proved that requirement is not bona fide, or if it is proved that application for recovery of possession has not been made by owner/landlord or if it is filed only to put pressure on tenant to enhance the rent, all that would

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disentitle the landlord/respondent from recovering possession over the suit accommodation. Therefore, it is manifest that the tenant in his application duly supported by an affidavit disclosed those facts which would disentitle the landlord from obtaining an order for the recovery of possession, and therefore, the Authority was bound to allow the application duly supported by an uncontroverted affidavit which discloses the facts which would disentitle the landlord from obtaining an order for the recovery of the possession.

8) Learned Authority vide impugned order dated 17/10/2003 erroneously dismissed the application filed by the tenant/petitioner for obtaining leave to defend and struck out his defence. Therefore, the impugned order passed in favour of the landlord/respondent and also the order rejecting the application are liable to be set aside.

9) In the result, the impugned order as well as the order rejecting the application filed under Section 23-C of the Act by the Authority are set aside and the application filed by the tenant/petitioner under Section 23-C of the Act for leave to contest the petition filed by the landlord is allowed. The case is remanded back to the Authority for deciding the same in accordance with law.

10) Both the parties are directed to appear before the Authority on 15/02/2006.

Sd/-
V.K.Shrivastava
Judge